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The BRICS and the Responsibility to Protect: Lessons from the Libyan and Syrian Crises

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ABSTRACT

The emerging ‘responsibility to protect’ (R2P) principle presents a significant challenge to the BRICS (Brazil, Russia, India, China and South Africa) states’ traditional emphasis on a strict Westphalian understanding of state sovereignty and non-interference in domestic affairs. Despite formally endorsing R2P at the 2005 World Summit, each of the BRICS has, to varying degrees, retained misgivings about coercive measures under the doctrine’s third pillar. This paper examines how these rising powers engaged with R2P during the 2011–2012 Libyan and Syrian civilian protection crises. The central finding is that although all five states expressed similar concerns over NATO’s military campaign in Libya, they have been unable to maintain a common BRICS position on R2P in Syria. Instead, the BRICS have splintered into two sub-groups. The first, consisting of Russia and China, remains steadfastly opposed to any coercive measures against Syria. The second, comprising the democratic IBSA states (India, Brazil and South Africa) has displayed softer, more flexible stances towards proposed civilian protection measures in Syria, although these three states also remain cautious about the implementation of R2P’s coercive dimension. This paper identifies a number of factors which help to explain this split, arguing that the failure to maintain a cohesive BRICS position on R2P is unsurprising given the many internal differences and diverging national interests between the BRICS members. Overall, the BRICS’ ongoing resistance to intervention is unlikely to disappear quickly, indicating that further attempts to operationalize R2P’s third pillar may prove difficult.

INTRODUCTION

This paper examines the attitudes of the BRICS (Brazil, Russia, India, China and South Africa) states towards the emerging ‘responsibility to protect’ (R2P)

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principle, focussing primarily on their engagement with R2P during the civilian protection crises in Libya and Syria from 2011 onwards.¹ Within the BRICS group, the veto-holding permanent members of the Security Council, Russia and China already wield considerable institutional power on matters of international peace and security, including civilian protection and intervention. Outside the Security Council, the democratic states of India, Brazil and South Africa (known as IBSA) have emerged as leading regional powers with aspirations to play greater roles in the international system. Although the internal differences and diverging national interests of the five BRICS members raise questions about the bloc's ability to articulate a common vision, moves to institutionalise the group are gathering pace.² One foreign policy orientation shared by all five states has been traditional insistence on a strict, Westphalian interpretation of state sovereignty which emphasises the principle of non-intervention in domestic affairs. R2P's emergence presents a significant challenge to this stance. The future success or failure of R2P as a new international norm guiding intervention for civilian protection purposes will depend, to a large extent, on how it is received by the BRICS.

¹ When referring to R2P this paper uses the terms 'principle', 'doctrine' and 'concept' interchangeably.

² The BRICS have held an annual summit since 2009 and in 2011 formed the BRICS Forum, an 'independent international organization that works for a structured social, economic and environmentally sustainable BRICS bloc'. See BRICS Forum <<http://www.bricsforum-org/brics-forum>> accessed 11 January 2013.

As the Libyan uprising unfolded in early 2011 all five BRICS states held seats at the Security Council, providing a valuable opportunity to gauge their responses to international efforts to implement R2P. The Security Council's timely and decisive response to the Libyan crisis initially raised hopes of a new era of international cooperation on civilian protection. Instead of opposing proposed military action in Libya, Russia, China, Brazil and India each abstained – while South Africa voted in favour – allowing Security Council resolution 1973 to pass. While supporters of R2P immediately hailed this historic resolution as a significant step towards the consolidation of R2P's status as a new international norm, disagreements soon emerged between Western and non-Western states over the scope of military action permitted by the resolution.³ Long-standing fears among the BRICS that R2P could be used as a pretext for regime change returned to the fore as the legitimacy of NATO's campaign in Libya was called into question by these states. This backlash against R2P has been evident in the Security Council's deadlock over the ongoing crisis in Syria, with Russia and China vetoing three Western-sponsored draft resolutions.

This paper contains four parts. The first outlines the concept of R2P and traces its evolution over the past 11 years. Part two briefly assesses the BRICS states' attitudes towards R2P prior to Libya. In part three their positions on the Libyan

³ Thomas G. Weiss, 'RtoP Alive and Well after Libya' (2011) 25 *Ethics and International Affairs* 287, 287.

intervention are dissected. The final part then analyses the BRICS' stances towards proposed civilian protection measures in Syria.

The central finding of this paper is that although all five BRICS share misgivings over R2P's third pillar and were critical of NATO's military action in Libya, this has not translated into a common BRICS position on Syria. Instead, the bloc has splintered into two sub-groups. On one side, Russia and China remain steadfastly opposed to any coercive measures – whether forcible or non-forcible – against Syria. On the other, the democratic IBSA states have displayed softer, more flexible stances towards proposed international responses, though they too remain cautious about R2P's coercive dimension. This paper identifies a number of factors which help to explain this split, arguing that the inability to maintain a cohesive BRICS position on R2P is unsurprising given the many internal differences and diverging national interests between the BRICS members. Overall, each of the BRICS retains misgivings over R2P, suggesting that further attempts to operationalize R2P's third pillar are likely to encounter significant resistance from these emerging powers.

R2P AND ITS EVOLUTION

R2P as a Concept

The concept of R2P evolved out of dismay at the international community's failure to prevent mass atrocities in Rwanda and elsewhere in the 1990s. It

represents a re-conceptualization of the relationship between state sovereignty and human rights, in which sovereignty is viewed ‘not as an absolute term of authority but as a kind of responsibility’.⁴ In the original 2001 International Commission on Intervention and State Sovereignty (ICISS) report R2P was conceived as having three elements: the responsibility to prevent a population from suffering serious harm; the responsibility to react if such harm occurs; and the responsibility to rebuild after an intervention.⁵ While the primary responsibility to protect lay with the host state, if that state perpetrated ‘serious harm’ to a population, or was unwilling or unable to stop such violence, the international community assumed a responsibility to protect.⁶ ‘Serious harm’ was defined as actual or imminent ‘large scale loss of life’ or ‘large scale ethnic cleansing’.⁷ Military intervention for civilian protection purposes was envisaged as an exceptional measure which should be considered in the light of six criteria: just cause; right intention; last resort; right authority; proportional means; and reasonable prospects of success.⁸). Although the ICISS designated the Security Council as the most appropriate body for authorizing military action for human protection purposes, it suggested that the General Assembly and regional or sub-regional organizations might provide

⁴ Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge University Press 2006) 251.

⁵ ICISS (International Commission on Intervention and State Sovereignty), *The Responsibility to Protect* (International Development Research Centre 2001) xi.

⁶ *ibid.*

⁷ *ibid* xii.

⁸ *ibid.*

alternative mechanisms for authorizing force if the Security Council was deadlocked.⁹

In its current form, as distinct from the earlier 2001 conception, R2P consists of three mutually-reinforcing pillars derived from the 2005 World Summit Outcome Document,¹⁰ and subsequently outlined in the UN Secretary-General's 2009 report.¹¹ The first is that states have an obligation to protect their populations from mass atrocity crimes (genocide, war crimes, ethnic cleansing, and crimes against humanity).¹² The second pillar stipulates that the international community should assist states in fulfilling their pillar one obligations. Where states are 'manifestly failing' to protect their populations, the third pillar provides that the international community has a responsibility to respond in a 'timely and decisive manner'.¹³ Action under the third pillar can encompass non-coercive means such as diplomacy and humanitarian assistance, and, coercive measures like sanctions or, as a last resort, the use of military force.

⁹ *ibid* xiii.

¹⁰ UNGA 'World Summit Outcome Document' UNGA Res 60/1 (2005) UN Doc A/RES/60/1.

¹¹ UNGA, 'Report of the Secretary-General: Implementing the Responsibility to Protect' (2009) UN Doc A/63/677.

¹² For discussion of the legal definitions of the four crimes, see David Scheffer, 'Atrocity Crimes Framing the Responsibility to Protect' (2009) 40 *Case Western Journal of International Law* 111.

¹³ UNGA (n 10) para. 139.

It is generally recognized that R2P is based on existing principles of international law and does not add anything new in the way of legal duties.¹⁴ R2P can be seen primarily as a political or moral commitment to implementing established (pillar one and two) duties created in treaty law and customary international law.¹⁵ Contrary to the original ICISS report, the current notion of military action under R2P's third pillar is permitted only in accordance with existing UN Charter Chapter VII procedures governing the Security Council's authorization of the use of force.

R2P's Evolution since 2001

In historical terms, R2P's reception into the international system has been rapid, though aspects of the concept remain contested. The most controversial dimension has been the third pillar, particularly the use of military force. From the outset,

¹⁴ See, for example, the assessments of Alex J. Bellamy and Paul D. Williams, 'The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect' 87 *International Affairs* 825 and Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' (2007) 101 *American Journal of International Law* 99. Note that Anne Orford, 'From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept' (2011) 3 *Global Responsibility to Protect* 400, 421 argues that R2P 'should be understood as normative in the former sense of providing legal authorisation for certain kinds of activities'. However, this is a claim that R2P *confers* legal powers, rather an assertion that it imposes legal duties.

¹⁵ For example, the Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 UNGA Res 260 (III), entered into force 12 January 1951) has been interpreted by the International Court of Justice as imposing a legal duty on a state to take peaceful measures to prevent genocide in circumstances where that state has relevant information and capacity to take such steps. See *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Merits) [2007] ICJ Rep 43.

many non-Western states, including the BRICS, were suspicious of this component, fearing that it might be used as a tool of Western imperialism.¹⁶ Conscious of the need to assuage such fears and build support for R2P, UN officials adopted a diplomatic strategy of emphasizing the more palatable elements of the concept, namely prevention and state assistance.¹⁷ This approach, coupled with R2P sceptics' ongoing resistance to the military dimension of R2P, led to several significant modifications of the original ICISS conception of R2P. First, the military force dimension was placed exclusively under Security Council control, closing off the ICISS's suggestion that alternative authorization mechanisms might be utilized if the Security Council was unable to agree. Second, the ICISS's criteria for determining the appropriateness of military intervention for humanitarian purposes were removed. Third, the types of violence covered by R2P were limited to the four mass atrocity crimes, rather than the previous, less precise category of 'large scale loss of life'. Finally, the threshold triggering the international community's responsibility was raised from a host

¹⁶ For example, in ICISS Roundtable discussions in June 2001, China stated that '[i]t is clear that certain Western powers have played with noble principles to serve their own hegemonic interests'. See ICISS (International Commission on Intervention and State Sovereignty), *The Responsibility to Protect: Research, Bibliography, Background – Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre 2001).

¹⁷ On R2P's preventive dimension, see Andrew Garwood-Gowers, 'Enhancing Protection of Civilians through Responsibility to Protect Preventive Action', in Angus Francis, Vesselin Popovski and Charles Sampford (eds), *Norms of Protection: Responsibility to Protect, Protection of Civilians in Armed Conflict and Their Interaction* (United Nations University Press 2012).

state being ‘unwilling or unable’ to halt violence, to the more onerous standard of ‘manifestly failing’. As a result of these changes, the conception of R2P that was unanimously adopted by UN member states at the 2005 World Summit was a weaker, less concrete version of the concept initially formulated by the ICISS.¹⁸ Under ‘R2P-lite’, as Weiss¹⁹ labelled it, military intervention remained an option in exceptional circumstances, but there was now no guidance as to when the Security Council should authorize such action. Since 2005 discussion of R2P within the UN system has continued to focus on the less controversial aspects of preventive action and state capacity-building under the first and second pillars. Despite lingering resistance to R2P from some states, this cautious approach eventually led to consensus within the Security Council on resolution 1674,²⁰ which ‘reaffirmed’ the World Summit’s commitments on R2P. The first mention of R2P in relation to a specific crisis occurred subsequently in 2006 with Security Council resolution 1706²¹ on the situation in Darfur. In 2008, the preventive component of the concept played a significant role in framing the international community’s response to post-election violence in Kenya, while a further

¹⁸ UNGA (n 10) para. 139. For discussion of R2P’s shift across the normative continuum, see Joachim Prantl and Ryoko Nakano, ‘Global Norm Diffusion in East Asia: How China and Japan Implement the Responsibility to Protect’ (2011) 25 *International Relations* 204.

¹⁹ Weiss (n 3) 750.

²⁰ UNSC Res 1674 (28 April 2006) UN Doc S/RES/1674.

²¹ UNSC Res 1706 (31 August 2006) UN Doc S/RES/1706.

resolution in 2009 provided additional endorsement of R2P in general terms.²² However, throughout this period, ongoing resistance to implementing R2P meant that specific references to the principle were not included in further Security Council resolutions on other crises. Instead, attention shifted from the Security Council to the General Assembly, where broader discussion of R2P could be undertaken by all UN member states. This culminated in the 2009 General Assembly debate²³, in which states overwhelmingly supported Secretary-General Ban Ki-Moon's report²⁴ (UNSG 2009) outlining the three pillars of R2P. Although this outcome appeared to vindicate the Secretary General's diplomatic approach, his strategy of emphasizing the preventive aspects of R2P meant that contentious issues surrounding coercive intervention remained unresolved.²⁵ This indeterminacy in pillar three enabled virtually all states – including the BRICS – to pledge support for R2P at a rhetorical level, but it also papered over significant differences between Western and non-Western states' interpretations of how R2P's coercive dimension should be operationalized.

²² UNSC Res 1894 (11 November 2009) UN Doc S/RES/1894. On the Kenyan situation, see Global Centre for the Responsibility to Protect 'The Responsibility to Protect and Kenya: Past Successes and Current Challenges' (13 August 2010) <http://responsibilitytoprotect.org/The_Responsibility_to_Protect_and_Kenya_Past_Successes_and_Current_Challenges%281%29.pdf> accessed 17 November 2012.

²³ UN Doc A/63/PV.97 (2009); UN Doc A/63/PV.98 (2009); UN Doc A/63/PV.99 (2009); UN Doc A/63/PV.100 (2009); UN Doc A/63/PV.101 (2009).

²⁴ UNGA (n 11).

²⁵ For criticism of the Secretary-General's diplomatic strategy, see Jennifer Welsh, 'Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP' (2011) 25 *Ethics and International Affairs* 255.

THE BRICS AND R2P PRIOR TO THE LIBYAN CRISIS

Each of the five BRICS states has traditionally espoused a strict Westphalian interpretation of state sovereignty which emphasises the principle of non-interference in the domestic affairs of other states. This has been reflected in opposition to the doctrine of humanitarian intervention and a general suspicion of Western-led military campaigns. R2P's potential to lead to coercive intervention has, therefore, posed a major challenge to the BRICS' historical stances on sovereignty and non-interference. This section briefly outlines each state's position on R2P between 2001 and 2011.

China

Prior to the Libyan crisis China's engagement with R2P had passed through two broad phases.²⁶ The first involved strong resistance to the original 2001 ICISS concept. China was deeply suspicious of the principle of R2P, fearing that Western powers would play with 'noble principles to serve their own hegemonic interests'.²⁷ Another major concern was the ICISS suggestion that military action for humanitarian purposes could be authorised by the General Assembly or

²⁶ For more on China's attitude towards R2P see Andrew Garwood-Gowers, 'China and R2P: The Implications of the Libyan Intervention' (2012) 2 *Asian Journal of International Law* 375; Rosemary Foot, 'The Responsibility to Protect and its Evolution: Beijing's Influence on Norm Creation in Humanitarian Areas' (2011) 6 *St Antony's International Review* 47.

²⁷ ICISS (n 16) 392.

regional organisations if the Security Council was deadlocked. For China (and Russia) this was unacceptable because it would mean the two veto-holding permanent members were deprived of their ability to block international action. Insistence by China and other states that the Security Council retain exclusive control over R2P's military dimension led to such a provision being included in the 2005 World Summit Outcome document. This allowed China to endorse R2P in that document but did not assuage Beijing's concerns about the principle.

The second phase of Beijing's relationship with R2P – from 2005 till 2011 – featured cautious endorsement of a conservative interpretation of the concept, tempered by resistance to implementing the new doctrine in specific cases. In official statements Beijing was careful to emphasise R2P's preventive and state assistance dimensions, while downplaying the potential for non-consensual coercive intervention. This apparent softening of Chinese attitudes towards R2P did not, however, translate into support for international action in country-specific cases of human rights abuses. China abstained from resolution 1706²⁸ on Darfur, and vetoed proposed sanctions against Myanmar²⁹ and Zimbabwe.³⁰ Overall, during this second phase Beijing remained deeply uncomfortable with R2P's third

²⁸ UNSC Res 1706 (n 21).

²⁹ UN Doc S/PV.5619, 2007.

³⁰ UN Doc S/PV.5933, 2008.

pillar. Although China did not openly attack the principle, its continuing suspicion meant it has generally been classified as an R2P sceptic or ‘rejectionist’.³¹

Russia

When R2P was first conceived in 2001 Russia, the other permanent member of the Security Council among the BRICS, expressed similar concerns to China. These included fears that the principle could be used as a pretext for ulterior motives, and that intervention authorised by bodies other than the Security Council would undermine Russia’s institutional power.³² In addition, Moscow’s cautious approach to R2P saw it emphasise respect for state sovereignty and territorial integrity. Russia also argued that there was no need for a new doctrine because existing UN Charter Chapter VII procedures already provided the Security Council with adequate authority to formulate responses to humanitarian crises.³³

Modifications to the original ICISS concept enabled Russia to endorse the lighter version of R2P contained in the 2005 World Summit Outcome Document.

³¹ Jonas Claes, ‘Protecting Civilians from Mass Atrocities: Meeting the Challenge of R2P Rejectionism’ (2012) 4 *Global Responsibility to Protect* 67, 71.

³² ICISS (n 16).

³³ ICR2P (International Coalition for the Responsibility to Protect), ‘State-by-State Positions on the Responsibility to Protect’ <http://www.responsibilitytoprotect.org/files/Chart_R2P_11August.pdf> accessed 17 November 2012.

However, since then Moscow has stressed the primacy of the first and second pillars, while insisting that any coercive intervention under R2P's third pillar should be limited to exceptional circumstances. In 2008 Moscow's disingenuous attempt to justify its military intervention in Georgia by reference to R2P was dismissed as a misapplication of the doctrine.³⁴ Aside from its own invocation of R2P in relation to Georgia, Russia showed little appetite for implementing R2P in country-specific situations, as evidenced by its vetoes on Myanmar and Zimbabwe. In general, Moscow's approach to R2P between 2005 and 2011 was similar to that of Beijing; it avoided explicit criticism of R2P as a concept, but sought to slow the normative development and implementation of the principle. For these reasons, Russia has also generally been regarded as an R2P sceptic or 'rejectionist'.³⁵

India

Like China and Russia, India's initial reaction to R2P in 2001 was one of deep suspicion.³⁶ Its post-colonial opposition to intervention and historical mistrust of Western motives meant that New Delhi was highly sceptical about the doctrine

³⁴ Gareth Evans, 'Russia, Georgia and the Responsibility to Protect' (2009) 1 *Amsterdam Law Forum* 25.

³⁵ Claes (n 31) 71.

³⁶ For detailed consideration of India's stance on R2P see Ian Hall, 'Tilting at Windmills? The Indian Debate over the Responsibility to Protect after UNSC 1973' (2013) 5 *Global Responsibility to Protect* 84.

proposed by the ICISS. To India, R2P was a smokescreen for Western powers to pursue their own national interests. New Delhi's opposition to R2P persisted up to the 2005 World Summit, where it attempted to derail the international community's endorsement of the principle.³⁷ Although India ultimately relented and allowed the inclusion of R2P in the final Outcome Document, concerns persisted.

From 2005 onwards India cautiously affirmed R2P – primarily in terms of pillars one and two – while continuing to express reservations about pillar three. At the 2009 General Assembly dialogue on R2P, India again warned of the doctrine's potential for misuse, stating bluntly that the 'responsibility to protect should in no way provide a pretext for humanitarian intervention or unilateral action'.³⁸ India's overall position towards R2P prior to the Libya crisis was ambivalent: it accepted that the primary responsibility to protect lay with states, but retained serious misgivings about the coercive dimension of the principle.

³⁷ Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Polity 2009).

³⁸ Permanent Mission to the UN (India), Statement by Ambassador Hardeep Singh Puri at the General Assembly Plenary Meeting on Implementing the Responsibility to Protect' (24 July 2009) <www.responsibilitytoprotect.org/India_ENG.pdf> accessed 19 November 2012.

Brazil

Brazil's position on R2P between 2001 and 2011 gradually evolved from initial rejection to cautious acceptance of most aspects of the concept.³⁹ Given its traditional foreign policy emphasis on state sovereignty and non-use of force it was unsurprising that Brazil's first response was to dismiss R2P as humanitarian intervention dressed up in 'new clothes'.⁴⁰ However, in the period leading up to the 2005 World Summit Brazil began to engage more constructively with R2P, and its language gradually softened. Its shifting stance on intervention and use of force was evident in Brazil's historic decision to play a leading role in the 2004 UN peace-keeping mission in Haiti. This was linked to recognition that if Brazil aspired to play a greater role – both regionally and globally – it would need to adapt its traditional foreign policy approach to reflect the responsibilities that attach to leading power status.

Following the 2005 World Summit Brazil's engagement with R2P gathered pace, though it stopped short of formally accepting the concept as a new norm. In fact, at the 2009 General Assembly dialogue Brazil stated that R2P 'is not a principle proper, much less a novel legal prescription', but rather a 'powerful political call for all States to abide by legal obligations already set forth in the Charter... and

³⁹ For detailed consideration of Brazil's position towards R2P see Kai Kenkel, 'Brazil and R2P: Does Taking Responsibility Mean Using Force?' (2012) 4 *Global Responsibility to Protect* 5.

⁴⁰ *ibid* 15.

other instruments’.⁴¹ Unsurprisingly, like the other BRICS, Brazil chose to emphasise the prevention and state capacity building aspects of R2P, while maintaining that the third pillar was ‘subsidiary’ and ‘a truly exceptional course of action’(ibid). Prior to the Libyan crisis Brazil’s overall position towards R2P remained equivocal: it was comfortable with some aspects of the concept but concerned about the risks associated with the coercive dimension.

South Africa

South Africa, the newest BRICS member, was the most receptive to R2P in the period prior to the Libyan crisis. From 1994 onwards post-apartheid South Africa played a significant role in crafting the African Union’s own version of R2P, which preceded the ICISS’s 2001 conception.⁴² Successive South African leaders actively promoted the continent’s shift ‘from non-interference to non-indifference’, indicating a willingness to depart from a traditional strict interpretation of state sovereignty. Yet despite its activism at a continental level, South Africa did not outline a clear, explicit policy position towards R2P at the

⁴¹ Permanent Mission to the UN (Brazil), ‘Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General – Responsibility While Protecting: Elements for the Development and Promotion of a Concept’, UN Doc A/66/551-S/2011/701 (9 November 2011) 2.

⁴² For analysis of South Africa’s stance on R2P see Chris Landsberg, ‘*Pax South Africana* and the Responsibility to Protect’ (2010) 2 *Global Responsibility to Protect* 436. *African Union Constitutive Act*, article 4(h) affirms ‘the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity’.

global level.⁴³ The picture that emerged from South African statements and practices was of a generally supportive stance towards R2P, coupled with an emphasis on responding to country-specific situations through negotiation and political processes, as opposed to applying punitive or coercive measures.⁴⁴

South Africa's preference for implementing R2P through diplomacy and other non-coercive tools was a feature of its time on the Security Council in 2007–2008. In a number of situations before the Council – including Zimbabwe, Sudan, Somalia and Myanmar – South Africa opposed Western proposals to impose sanctions and other punitive measures, arguing instead that political processes and negotiation were more appropriate means of promoting R2P.⁴⁵ This strategy was part of a broader South African policy of conflict-resolution based upon engaging with, and promoting dialogue between, protagonists. On the whole prior to Libya, South Africa promoted R2P as a concept, but was wary of attempts to implement it using coercive measures.

⁴³ Landsberg (n 42).

⁴⁴ *ibid.*

⁴⁵ *ibid.*

THE BRICS AND R2P IN LIBYA

R2P played a central role in framing the international community's response to the situation that developed in Libya in February 2011.⁴⁶ This was reflected in the language used by the Security Council throughout the crisis. First, following the Gaddafi regime's initial violent crackdown on protesters, the Security Council issued a statement in which it explicitly 'called on the Government of Libya to meet its responsibility to protect its population'.⁴⁷ Second, on 26 February 2011, the Council unanimously adopted resolution 1970⁴⁸ under Chapter VII of the UN Charter, again expressly referring to R2P by 'recalling the Libyan authorities' responsibility to protect its population'. Acting in accordance with Article 41 of the Charter, this resolution imposed an arms embargo and other restrictions on travel and Libyan assets, and referred the situation to the International Criminal Court. Finally, on 17 March 2011, the Security Council passed resolution 1973,⁴⁹ with ten affirmative votes (including South Africa's) and abstentions from China, Russia, Brazil, India, and Germany. It established a no-fly zone and authorized member states to take 'all necessary measures to protect civilians and civilian populated areas under threat of attack' while 'excluding a foreign occupation

⁴⁶ For a detailed account of events leading up to NATO's military intervention in Libya, see Paul D. Williams, 'Briefing: The Road to Humanitarian War in Libya' (2011) 3 *Global Responsibility to Protect* 248.

⁴⁷ UNSC 'Security Council Press Statement on Libya' (22 February 2011) UN Doc SC/10180.

⁴⁸ UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970.

⁴⁹ UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

force of any form on any part of Libyan territory’.⁵⁰ This was the first time the Security Council had authorised the use of force for civilian protection purposes against the wishes of a host state. Once again, R2P was explicitly mentioned: resolution 1973 reiterated ‘the responsibility of the Libyan authorities to protect the Libyan population’.⁵¹ Shortly after the passage of the resolution, a coalition of states under NATO control began military action against Libyan targets.

At first glance, the passage of resolution 1973 suggested a new consensus among Security Council members on the need for decisive international responses to humanitarian crises. However, closer examination reveals that a highly unusual, perhaps exceptional, confluence of factors produced a ‘perfect storm’ in relation to the implementation of R2P in Libya.⁵² Three crucial determinants were the clarity and immediacy of the threat to civilians, Gaddafi’s international isolation and rapid fragmentation of his regime, and the presence of regional consensus on the need for international intervention.⁵³ The combined effect of these considerations was that the BRICS, who retained misgivings about using force in Libya, found themselves in a difficult position. Voting against resolution 1973 in the face of mass atrocity crimes would have led to serious criticism and damaged

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² Tim Dunne and Jess Gifkins, ‘Libya and R2P: Norm Consolidation or Perfect Storm?’ (*The Interpreter*, 14 April 2011) <www.lowyinterpreter.org/post/2011/04/14/Libya-R2P-Norm-consolidation-or-perfect-storm.aspx> accessed 18 November 2012.

⁵³ Bellamy and Williams (n 14) 838-839.

their international reputations.⁵⁴ Confronted with this prospect, China, Russia, Brazil and India abstained, while South Africa voted in favour.

Table 1 – BRICS’ Votes in the Security Council (SC) on Libya

SC Res 1970 (26 Feb 2011)		SC Res 1973 (17 March 2011)
China	Yes	Abstain
Russia	Yes	Abstain
India	Yes	Abstain
Brazil	Yes	Abstain
South Africa	Yes	Yes

Despite allowing resolution 1973 to pass each of the BRICS retained serious misgivings about the implementation of R2P’s third pillar in the Libyan situation. These concerns emerged in two stages. First, there were statements made in the Security Council immediately after the vote, and later the BRICS were highly critical of the way in which NATO’s military campaign in Libya was carried out.

Following the Security Council vote on resolution 1973 each of the BRICS expressed concerns over the text of the resolution. China stated it had ‘serious difficulty with parts of the resolution’ and its preference was to resolve ‘the current crisis... through peaceful means’.⁵⁵ Russia regretted the fact that it had received no answers to its questions about ‘how the no-fly zone would be enforced, what the rules of engagement would be and what limits on the use of

⁵⁴ *ibid.*

⁵⁵ UNSC Verbatim Record (17 March 2011) UN Doc S/PV6498, 10.

force there would be'.⁵⁶ The scope of the mandate in resolution 1973 was also a concern for India, which noted the lack of 'clarity about details of enforcement measures... and how these measures will exactly be carried out'.⁵⁷ The Brazilian representative in the Security Council was of the view that 'the text of resolution 1973 (2011) contemplates measures that go far beyond that call [for a no-fly zone]'.⁵⁸ Even South Africa, which initially agreed to join Brazil and India in abstaining but ultimately decided to vote in favour, appeared somewhat uncomfortable with the resolution. It warned against 'unilateral military intervention under the pretext of protecting civilians' and expressed 'hope that this resolution will be implemented in full respect for both its letter and spirit'.⁵⁹

The similarities in the BRICS' positions and statements on resolution 1973 were not coincidental; officials have confirmed that bloc members consulted each other prior to the vote.⁶⁰ First the IBSA states each agreed to abstain, and then IBSA consulted with China and Russia and found they could coordinate their abstentions.⁶¹ However, at the last minute South Africa changed its position and

⁵⁶ *ibid* 8.

⁵⁷ *ibid* 6.

⁵⁸ *ibid*.

⁵⁹ *Ibid* 10.

⁶⁰ Daisuku Higashi, 'Battle at the UN Security Council on Peace Enforcement in Libya and Syria: Focusing on the Strategies of BRICS' (Doshisha 2nd International Conference on Humanitarian Intervention, Kyoto, 25–26 June 2012). < <http://gdoshisha.files.wordpress.com/2012/06/daisaku-higashi-paper.pdf>> accessed 12 December 2012.

⁶¹ *ibid*.

decided to vote in favour. This shift was prompted by the positions taken by the other African members of the Security Council, Nigeria and Gabon, which were in favour of the resolution. South Africa made a strategic decision that aligning itself with regional states was of greater importance than adopting a common IBSA or BRICS stance. Despite this late decision to support resolution 1973, South Africa's statements in the Security Council indicate that it, too, retained doubts about the resolution.

The second stage of the BRICS' concerns about R2P emerged soon after military action in Libya began. Criticism of NATO's campaign in Libya followed three main lines. The first was the BRICS' accusation that Western powers had exceeded the scope of the mandate in resolution 1973 by arming rebels and attacking a broad range of targets beyond those necessary for the protection of civilians. Russia warned that '[a]ny act going beyond the mandate established by that resolution in any way or any disproportionate use of force is unacceptable'.⁶² China stated that '[w]e are not in favour of any arbitrary interpretation of the Council's resolutions or of any actions going beyond those mandated'.⁶³ South Africa also questioned 'whether the actions of the implementing states have been consistent with the letter and spirit of [the arms embargo imposed by] resolution 1970 (2011)'.⁶⁴ Closely linked to the first line of criticism was the broader claim

⁶² UNSC Verbatim Record (4 May 2011) UN Doc S/PV6528, 9.

⁶³ *ibid* 10.

⁶⁴ *ibid* 11.

that R2P and civilian protection had been used by the West as a pretext for the strategic goal of removing the Gaddafi regime.⁶⁵ While this concern over regime change was expressed most strongly by Russia, it was also a feature of the other BRICS' criticisms of NATO's campaign throughout 2011, and continues to pose a major challenge to the legitimacy of R2P.⁶⁶ The third basis for criticism of NATO's campaign in Libya was the primacy given to the use of military force and the potential for forcible responses to do more harm than good. Russia, in particular, specifically drew a link between the West's military intervention and the outbreak of 'full-fledged civil war, the humanitarian, social, economic and military consequences of which transcend Libyan borders'.⁶⁷ The other BRICS also indicated a preference for political, rather than military, solutions to the Libyan conflict.⁶⁸

Overall, each of the BRICS adopted similar stances towards R2P in the Libyan crisis. With the exception of South Africa's late decision to vote in favour of resolution 1973, the bloc was able to coordinate its voting strategies within the Security Council. In addition, all five rising powers pursued similar lines of criticism towards NATO's military campaign, highlighting a number of shared concerns about the implementation of R2P's third pillar. Speaking in June 2011,

⁶⁵ See, for example, Russia's statements in the Security Council, UNSC Verbatim Record (4 October 2011) UN Doc S/PV6627, 3.

⁶⁶ *ibid.*

⁶⁷ *ibid.* 5.

⁶⁸ UNSC (n 62).

India's ambassador to the UN described the political impact of the Libyan intervention: 'Libya has given R2P a bad name'.⁶⁹ This assessment was echoed by Kofi Annan, who recently admitted that '[h]onestly, the way the "responsibility to protect" was used in Libya caused a problem for the concept'.⁷⁰ These BRICS' concerns over R2P in the aftermath of the Libyan experience provided an important contextual background to the Security Council's deliberations over civilian protection measures in Syria.

THE BRICS AND R2P IN SYRIA

In marked contrast to its swift, decisive action on Libya, the Security Council has been unable to reach consensus on any substantial measures to stem the violence in Syria.⁷¹ Since the Syrian uprising began in March 2011 the only action Council members have been able to agree on was the April 2012 deployment of an unarmed observer mission, which proved ineffective. Three separate Western-

⁶⁹ IPI (International Peace Institute), 'IPI Policy Forum: Envoys Agree on RtoP Principle, Question Implementation' (28 June 2011) <www.ipacademy.org/events/details/298-Envoys%20Agree%20on%20RtoP%20Principle,%20Question%20Implementation.html> accessed 27 November 2012.

⁷⁰ Natalie Nougayrède, 'Interview with Kofi Annan: "On Syria, It's Obvious, We Haven't Succeeded"' *Le Monde* (Paris, 7 July 2012) <www.lemonde.fr/proche-orient/article/2012/07/07/kofi-annan-sur-la-syrie-a-l-evidence-nous-n-avons-pas-reussi_1730658_3218.html> accessed 29 November 2012 (translated by Mark K. Jensen).

⁷¹ For more on the Security Council's deadlock over Syria see Jess Gifkins, 'Briefing – The UN Security Council Divided: Syria in Crisis' (2012) 4 *Global Responsibility to Protect* 377 and Spencer Zifcak, 'The Responsibility to Protect after Libya and Syria' (2012) 13 *Melbourne Journal of International Law* 53.

sponsored draft resolutions⁷² proposing measures against the Assad regime have been vetoed by Russia and China in the Security Council, prompting angry diplomatic exchanges between Council members.

Throughout the crisis disagreements have centred on two key issues: first, how to interpret events in Syria, and second, how to respond to the violence.⁷³ In the early stages of the conflict Western powers characterised the situation as brutal repression of pro-democracy protesters by the Assad regime, whereas the BRICS – particularly Russia and China – emphasised that violence was occurring in the context of a legitimate government response to attacks on state infrastructure by armed opposition groups (ibid). These divergent perspectives on the factual situation on the ground have undermined attempts to reach agreement on appropriate responses. While Western states – and subsequently the Arab League – have pushed for President Assad to step aside, Russia and China have strongly opposed all external attempts to impose regime change.

The BRICS' positions on Syria must be assessed in two separate phases. The first – from April to November 2011 – saw all five members assume a unified stance in opposition to proposed Western responses to the crisis. However, in the second phase – from December 2011 onwards – the IBSA states shifted their positions, gradually becoming more receptive to proposed civilian protection measures.

⁷² UNSC Verbatim Record (4 October 2011) UN Doc S/2011/612; UNSC Verbatim Record (4 February 2012) UN Doc S/2012/77; UNSC Verbatim Record (19 July 2012) UN Doc S/2012/538.

⁷³ Gifkins (n 71) 380.

Instead of continuing to act as a bloc the BRICS split into two sub-groups: on one side, Russia and China remained strongly aligned in steadfast opposition to any coercive measures against Syria, while on the other, the IBSA states adopted more flexible, though not always identical, stances towards proposed international action.

Table 2 – BRICS’ Votes in Security Council (SC) and General Assembly (GA) on Syria

	1 st vetoed draft SC Res (4 Oct 2011)	2 nd vetoed draft SC Res (4 Feb 2012)	GA Res 66/253 A (16 Feb 2012)	3 rd vetoed draft SC Res (19 July 2012)	Syria GA Res 66/253 B (3 August 2012)
China	No	No	No	No	No
Russia	No	No	No	No	No
India	Abs.	Yes	Yes	Yes	Abs.
Brazil*	Abs.	N/A	Yes	N/A	Yes
South Africa	Abs.	Yes	Yes	Abs.	Yes

**Brazil was no longer a Security Council member in 2012.*

The initial period of unity between the BRICS is reflected in the response to the first Western-sponsored draft resolution put to a vote in the Security Council on 4 October 2011. Although the text was relatively weak – it merely condemned the violence and warned of possible sanctions if civilian casualties continued – it drew strong resistance from all five BRICS.⁷⁴ China and Russia vetoed the draft, while IBSA decided to abstain in order to avoid confrontation with the West.⁷⁵

⁷⁴ UNSC Verbatim Record (4 October 2011) (n 72).

⁷⁵ *ibid.* There were nine votes in favour (Bosnia and Herzegovina, Colombia, France, Gabon, Germany, Nigeria, Portugal, United Kingdom of Great Britain and Northern Ireland, and United States of America), two against (China and Russia), and four abstentions (Brazil, India, Lebanon, and South Africa).

Despite abstaining, the IBSA states were clearly aligned with Russia and China in opposition to the UK drafted text. Statements in the Security Council highlighted a number of BRICS' concerns, including the text's failure to address violence emanating from opposition groups, suspicions that the West was seeking to initiate regime change, and fears that threatening sanctions would exacerbate tensions in Syria.⁷⁶ The strongest language came from Russia, which stated that '[t]he international community is alarmed by statements that compliance with Security Council resolutions on Libya in the NATO interpretation is a model for the future actions of NATO in implementing the responsibility to protect'.⁷⁷ Moscow warned that it 'is easy to see that today's "Unified Protector" model [NATO's Libyan operation] could happen in Syria' and that '[t]hese types of models should be excluded from global practices once and for all'.⁷⁸

As violence in Syria worsened the IBSA states gradually softened their resistance to international attempts to resolve the crisis. A second Western-led draft resolution, which endorsed the League of Arab States' (LAS) plan for President Assad to step aside in a 'Syrian-led political transition to a democratic, plural political system', was put to a vote in the Security Council on 4 February 2012.⁷⁹ To assuage the BRICS' concerns about interpretation of Security Council

⁷⁶ *ibid.*

⁷⁷ *ibid.* 4.

⁷⁸ *ibid.*

⁷⁹ UNSC Verbatim Record (4 February 2012) (n 72).

mandates, the text explicitly ruled out any military action under article 42 of the UN Charter. This time India and South Africa distinguished themselves from Russia and China by voting in favour of the proposal. Russia and China again cast double vetoes to block the resolution, arguing that the text was unbalanced. Beijing stressed that ‘pressuring the Syrian Government ... will not help resolve the Syrian issue’.⁸⁰ On 16 February 2012 the UN General Assembly adopted a non-binding resolution containing similar wording to the vetoed Security Council draft.⁸¹ In the General Assembly the BRICS again split into two sub-groups: Russia and China voted against the resolution, while the IBSA states supported it. Two important factors contributing to IBSA’s shifting position were the worsening situation on the ground in Syria, plus regional support for international measures, namely the Arab League’s plan for Assad to depart.⁸² These considerations were not, however, sufficient to alter the firm stances taken by Russia and China.

Following the second double veto, former UN Secretary-General Kofi Annan was appointed Joint Special Envoy to Syria by the UN and the LAS. Hopes of a resolution to the crisis were raised briefly when Annan’s Six-Point Plan was agreed to by the Syrian government and subsequently endorsed by the Security Council, which authorised the UN Supervision Mission in Syria (UNSMIS) to

⁸⁰ UNSC Doc S/2012/6711, 9.

⁸¹ UNGA Res 66/253 (16 February 2012) UN Doc A/Res/66/253. This resolution was passed with 137 votes in favour, 12 against, and 17 abstentions.

⁸² UN Doc S/2012/6711, 2012.

monitor compliance with the plan. However, this mission, described by one commentator as a ‘lowest common-denominator response’, was later suspended due to the continuing violence.⁸³

After that brief period of consensus within the Security Council, divisions between Western powers and Russia and China re-emerged once it became clear that the Six-Point Plan was not being implemented. A third Western-sponsored draft resolution was put to a vote in the Security Council on 19 July 2012. This proposal would have extended UNSMIS for another 45 days and threatened sanctions against the Syrian authorities if they failed to comply with Kofi Annan’s Six-Point Plan.⁸⁴ Once more, Russia and China vetoed the draft, complaining that it failed to adequately address violence emanating from Syrian opposition groups, did not explicitly rule out military intervention, and would not help to resolve the situation on the ground.⁸⁵ Again, India and South Africa adopted more accommodating stances, with the former voting in favour of the draft, while the latter abstained. South Africa’s reasons for abstaining included concern that the text was unbalanced because it ‘preferred one side over the other’, which could lead to ‘polarization of the conflict’.⁸⁶

⁸³ Gifkins (n 71) 377.

⁸⁴ UNSC Draft Security Council Resolution (19 July 2012) UN Doc S/2012/538.

⁸⁵ UNSC Verbatim Record (19 July 2012) UN Doc S/PV.6801.

⁸⁶ *ibid* 12.

The BRICS again split into two sub-groups when a non-binding General Assembly resolution was passed on 3 August 2012. Here, an overwhelming majority of states supported a Saudi-drafted text that condemned the Syrian government's continued use of heavy weapons in civilian areas and called for a ceasefire, while 'deploring the failure of the Security Council to agree on measures'.⁸⁷ However, Russia and China were among a small number of states that voted against the resolution. Their objections centred on the unbalanced nature of the text and the fact that outside 'measures aimed at forcing regime change' would not help to resolve the situation.⁸⁸ The IBSA states again distinguished themselves from China and Russia, though they did not adopt identical voting positions. While Brazil and South Africa voted in favour of the resolution, India abstained. New Delhi was concerned that the text endorsed an earlier Arab League call for President Assad to step down.⁸⁹ These differences between the IBSA states illustrate the flexibility and unpredictability of their voting positions.

The diverging positions of Russia and China, on one side, and the IBSA states on the other, can be explained by a number of factors. First, differences between the BRICS' national interests have been relevant. Russia's strong opposition to intervention has been influenced by its strategic interests in Syria, including a

⁸⁷ UNGA Res 66/253 B (3 August 2012) UN Doc A/RES/66/253B, 2.

⁸⁸ UN Doc S/1215/2012, 15.

⁸⁹ *ibid.*

naval base at Tartus and extensive arms contracts with the Assad government.⁹⁰ China's general strategy of aligning itself with Russia in the Security Council, and its concerns over regime change in the light of the Libyan intervention, have prompted it to provide strong support for the Russian position on Syria. The more flexible stances taken by the IBSA states, on the other hand, can be partly attributed to the fact that there is less at stake for them if the Assad regime were to fall.

Another important factor has been the differing internal governance structures of the BRICS. The democratic nature of the IBSA states is relevant in two respects: first, it has produced a degree of sympathy for the human rights of pro-democracy protesters throughout the Arab Spring, and second, as the Syrian crisis has worsened domestic media and civil society pressure for international action has had an impact on IBSA positions towards Syria.⁹¹ These influences are absent, or at least significantly weaker, within the non-democratic Russian and Chinese systems.

A third significant factor contributing to the gradual softening of the IBSA states' positions relates to their positions as reformist powers. India, Brazil and South Africa are all seeking to gain permanent seats in an expanded Security Council

⁹⁰ Gifkins (n 71) 384.

⁹¹ Mattias Spektor, 'Brazil wants to make "Responsibility to protect" into Responsibility While Protecting' (30 July 2012) <<http://dbsjeyaraj.com/dbsj/archives/8876>> accessed 27 November 2012.

and are conscious of the need to establish their credentials as good international citizens with the capacity to assume greater roles in international affairs.⁹² Attempts to gain Western support for IBSA's vision of UN reform could be undermined if the three states were to adopt obstructionist stances towards civilian protection. Russia and China, on the other hand, already occupy permanent seats on the Security Council and therefore, maintaining strong opposition to Western positions does not carry the same costs. In fact, resisting the West over Syria may benefit Russia and China in terms of increased domestic support and national pride.⁹³ Overall, these three factors help to explain why the IBSA states have gradually moved away from the Russian and Chinese position on the Syrian issue.

Despite their more accommodating stances towards international intervention in Syria the IBSA states, like Russia and China, remain concerned about the implementation of R2P's third pillar. In an attempt to move the R2P debate forward Brazil released a paper called 'Responsibility While Protecting' (RwP) in November 2011.⁹⁴ This document contained two main features. First, it outlined several criteria for the Security Council to consider when deliberating over the use

⁹² Simon Adams, 'Emergent Powers: India, Brazil, South Africa and the Responsibility to Protect' (*Huffington Post*, 20 September 2012) <www.huffingtonpost.com/simon-adams/un-india-brazil-south-africa_b_1896975.html> accessed 28 November 2012.

⁹³ Mark Bennetts, 'What's Behind Russia's Stance on Syria?' (*RIA Novost*, 31 May 2012) <<http://en.rian.ru/analysis/20120531/173776552.html>> accessed 28 November 2012.

⁹⁴ Permanent Mission to the UN (Brazil), Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General – Responsibility While Protecting: Elements for the Development and Promotion of a Concept', UN Doc A/66/551-S/2011/701.

of force for civilian protection purposes. These included principles of force as a last resort only, proportionality and likelihood of success. The second significant feature was a call for the Security Council to establish monitoring and compliance mechanisms for assessing the manner in which resolutions are interpreted and implemented. This was a direct response to concerns over the way NATO interpreted resolution 1973 in Libya.

Overall, RwP can be seen as an attempt to build a bridge between the West and R2P rejectionists like Russia and China.⁹⁵ As a concept RwP is intended to complement, rather than replace, R2P. It offers an opportunity for Brazil to assert its credentials as an increasingly important international player by taking a leading role in the next stage of R2P's normative development. Although initial reactions to RwP from the West and Russia and China were largely dismissive, the concept was given considerable attention by the UN Secretary General in his September 2012 report on R2P⁹⁶ and may provide a useful starting point for future discussions about R2P.

⁹⁵ Oliver Stuenkel, 'Brazil and the responsibility while protecting', (*Post Western World*, 28 November 2011) <<http://www.postwesternworld.com/2011/11/28/brazil-and-the-responsibility-when-protecting/>> accessed 29 November 2012.

⁹⁶ UNGA 'Report of the Secretary-General: Responsibility to protect – timely and decisive response' (25 July 2012) UN Doc A/66/874–S/2012/578.

CONCLUSION

The BRICS' positions towards the implementation of R2P in Libya and Syria offer important insights into the future of intervention for civilian protection purposes in a multi-polar, post-Western world. All five BRICS expressed similar concerns over NATO's military campaign in Libya, leading to a backlash against R2P which has paralysed the Security Council over Syria. Although initial signs were that the BRICS would form a unified bloc in opposition to the West, as the situation in Syria worsened the IBSA members gradually shifted away from Russia and China to adopt softer, more flexible stances to proposed international action. For IBSA, the Libyan and Syrian crises highlight a common dilemma faced by emerging powers: 'the clash between regional norms [such as non-intervention and non-use of force] that have until recently been adequate to the country's previous focus, and the attitudes inherent to a position of great influence at the international level'.⁹⁷ IBSA's shifting stance on Syria indicates that these states are gradually adapting their traditional foreign policy stances to reflect the responsibilities and ambitions of future great powers, though they retain concerns about R2P's third pillar. The positions of Russia and China, on the other hand, appear to have hardened as a result of the Libyan experience with R2P.

For the future of R2P's third pillar the crucial question is whether the political, conceptual, and operational challenges that have arisen in the aftermath of the

⁹⁷ Kenkel (n 39) 21.

Libyan and Syrian crises can be resolved. While the current situation suggests that tensions between Western powers and Russia and China over R2P are unlikely to disappear quickly, the principle has survived previous periods of strong opposition during its short history, and may do so again. Although Brazil's 'Responsibility While Protecting' initiative offers some hope for bridging the gap between the two camps, in the short term at least attempts in the Security Council to operationalize R2P's third pillar are likely to encounter significant resistance from Moscow and Beijing.